

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

BRENT KNUDSON

Plaintiff,

vs.

WACHOVIA BANK, a National banking
entity; TRANS UNION, LLC; a foreign limited
liability company; EXPERIAN
INFORMATION SOLUTIONS, INC., a
foreign corporation; and EQUIFAX
INFORMATION SERVICES, LLC; a foreign
limited liability company;

Defendants.

Case No.: 2:07cv608-WHA

DEFENDANT EXPERIAN INFORMATION SOLUTIONS, INC.'S

MOTION TO DISMISS AMENDED COMPLAINT

Defendant Experian Information Solutions, Inc. ("Experian"), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("Federal Rules"), hereby moves to dismiss Plaintiff's Amended Complaint because this matter is barred on *res judicata* grounds. On January 4, 2008, Plaintiff and Experian jointly moved, pursuant to Federal Rule 41(a)(1), to dismiss Experian from this lawsuit with prejudice.¹ (Court Doc. #34.) On January 7, 2008, the Court granted said motion, dismissed Experian with prejudice, and directed the clerk to close the above-captioned case file. (Court Doc. #35.) On February 27, 2008, Plaintiff moved the Court to reinstate Wachovia Bank, N.A. ("Wachovia") as a defendant (Court Doc. #36), and on April 15, 2008, the Court granted that Motion (Court Doc. #40), ordering Plaintiff to file an Amended Complaint by

¹ While weighing a motion to dismiss under Federal Rule 12(b)(6), a "court may take judicial notice of its own records." *United States v. Ray*, 811 F.2d 1453, 1457 n.5 (11th Cir. 1987). Experian respectfully requests the Court to take judicial notice of its own docket while judging this motion.

April 22, 2008. On April 22, 2008, Plaintiff filed an Amended Complaint that appears to reassert the same causes of action against Experian that previously had been dismissed with prejudice.

To the extent Plaintiff seeks to reassert the already dismissed claims against Experian, Experian respectfully requests the Court to deny that relief on *res judicata* grounds. *Res judicata* bars a subsequent action where “(1) the prior decision was rendered by a court of competent jurisdiction; (2) there was a final judgment on the merits; (3) the parties were identical in both suits; and (4) the prior and present causes of action are the same.” *Davila v. Delta Air Lines, Inc.* 326 F.3d 1183, 1187 (11th Cir. 2003). Notably, a dismissal “with prejudice” is considered to be “an adjudication upon the merits” under Federal Rule 41(a). *Semtek Int’l, Inc. v. Lockheed Martin*, 531 U.S. 497, 505; 121 S. Ct. 1021, 1026 (finding that a dismissal with prejudice precludes the refiling of the same claim in the dismissing Court).

Applying the *res judicata* factors, Plaintiff’s amended lawsuit against Experian is barred as a matter of law. There is no question that this Court is one of competent jurisdiction, and that the original dismissal with prejudice, done pursuant to Federal Rule 41(a), was a final judgment on the merits.² *Id.* Moreover, the allegations in Plaintiff’s Original and Amended Complaint’s are identical as to Experian, as are the parties. (*Compare* Court Doc. #1 *with* Court Doc. #41.) This Court’s final judgment on the merits is *final*, and Experian is entitled to rely upon it. Plaintiff cannot misuse his renewed lawsuit against Wachovia to bootstrap Experian into a duplicative lawsuit. Accordingly, Experian respectfully requests this Court to dismiss this action with prejudice.

² The dismissal order is a final judgment, *Pitney Bowes, Inc. v. Mestre*, 701 F.2d 1365, 1368 (11th Cir. 1983) (a final decision “ends the litigation on the merits and leaves nothing for the court to do but execute the judgment”), and was not appealed. Plaintiff also did not move to have Experian reinstated in this matter (as he could not); nor did the Court grant such relief. As such, the claims against Experian are barred.

Dated: May 9, 2008

Respectfully submitted,

By: /s/ Mark H. Weintraub
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[PROPOSED] ORDER GRANTING MOTION TO DISMISS

This Court, having considered Defendant Experian Information Solutions, Inc.'s Motion to Dismiss Amended Complaint, and finding that good cause appears therefore and that it should be GRANTED in its entirety.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Amended Complaint against Experian is dismissed with prejudice in its entirety.

W. Harold Albritton, III
United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document, DEFENDANT EXPERIAN INFORMATION SOLUTIONS, INC.'S MOTION TO DISMISS AMENDED COMPLAINT, was filed with the Clerk of the Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all attorneys of record.

May 9, 2008

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